

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing amendment of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five calendar days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 1349.6(b). The Department complied with Government Code Section 11346.1(a)(2) by providing at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

Specific Facts Showing the Need for Immediate Action

Mediterranean fruit fly is a destructive insect pest which attacks the fruit of various plants including over 260 crops such as citrus, tomatoes, grapes, avocados, peaches, and cherries.

The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

Mediterranean fruit flies were detected in the County of Santa Clara. On September 18, 2007, an adult female Mediterranean fruit fly was taken from a trap in the San Jose area of Santa Clara County. On October 10, 2007, adult female and male Mediterranean fruit flies were taken from traps located at two separate residences in the San Jose area of Santa Clara County. The detection of five adult Mediterranean fruit flies was indicative of an incipient infestation of the fly in the San Jose area of Santa Clara County. The United

States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for a quarantine response. The Food and Agriculture Organization of the United Nations has a similar international standard established.

This amendment of Section 3406(b) will remove the San Jose area of Santa Clara County from the area under quarantine for Mediterranean fruit fly. The fly will be declared eradicated from this area on August 4, 2008; therefore, it will no longer be necessary to regulate the movement of hosts and possible carriers of the fly from this area effective August 4, 2008.

The quarantine area for the San Jose area included the initial detection sites as the epicenter and a buffer zone which extends approximately 4-1/2 miles in each direction from the epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Food and Agriculture, and the Santa Clara County Agricultural Commissioner. The proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of Mediterranean fruit fly to noninfested areas.

This amendment will remove a quarantine area in Santa Clara County of approximately 75 square miles surrounding the Mediterranean fruit fly infestation in the San Jose area of Santa Clara County.

It is necessary to amend this regulation on an emergency basis to remove the quarantine on the San Jose area and remove restrictions on the movement of hosts and possible carriers that are unnecessary. Currently, there are approximately 192 businesses, 90 percent of which are estimated to be small businesses, which must comply with the quarantine restrictions. These small businesses include growers, host processors, nurseries, fruit sellers/distributors/vendors, farmers' markets/community gardens/swap meets and yard maintenance. If these unnecessary restrictions were continued, it would

create an unnecessary burden on these small businesses. Commercially produced host crops, if the restrictions were continued, would have to be treated or would not be allowed movement from the areas

Additionally, if these unnecessary restrictions were continued, it would create an unnecessary burden for the general public in that area. Host crops are being or will be harvested in this area soon. Those members of the public who have grown host fruits and vegetables would be required to process the commodities before the fruits and vegetables can be moved or given away or they would have to unnecessarily destroy the host fruits and vegetables.

Finally, our international trading partners are keenly aware of Mediterranean fruit fly infestations in California and implement restrictions on our international trade of host commodities. Some of our major trading partners, like Japan, will not accept any host commodities produced or packed within a regulated area.

Authority and Reference Citations

Authority: Sections 407 and 5301, 5302 and 5322, Food and Agricultural Code.

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Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce such quarantine regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests to protect California's agricultural industry.

Section 3406. Mediterranean Fruit Fly Interior Quarantine.

This amendment will remove the quarantine area for Mediterranean fruit fly of approximately 75 square miles surrounding the San Jose area of Santa Clara County. The

effect of the amendment is to remove the authority for the State to regulate movement of hosts and possible carriers of Mediterranean fruit fly within and from the area under quarantine to prevent artificial spread of the fly to noninfested areas.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3406 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because this amendment will remove the portion of Santa Clara County that was in the area under quarantine; therefore, enforcement will no longer be necessary. There are no mandated costs associated with the removal of the San Jose area from the regulation.

Cost Estimate

The Department also has determined that no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State will result from the proposed action.